ceedings. The Schedule of the Act and the condition in the Bill of Lading seem to be clear and unequivocal beyond argument. Even after the letter of the 5th April there was lengthy delay in the settlement of the claim and it was, in my view, the clear duty of the plaintiffs, as prudent persons, to enforce their threat of legal proceedings and protect their right of action by issuing a Writ of Summons.

In my view, the plea of limitation must succeed, and I sincerely regret that I have no alternative but to dismiss the action. The defendants are legally entitled to their costs and, with considerable reluctance, I order accordingly.

Claim dismissed.

Solicitors: *Lee Thean-Chu; Presgrave & Matthews.*

CHAO CHONG & ORS. v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Good J.A. and Ismail Khan J.) November 2, 1959]

[K. L. — F.M. Criminal Appeal No. 21 of 1959]

Criminal Law and Procedure — Accomplice — Witness — Test of — Child witness — Risk in acting on uncorroborated evidence of a child.

When the question arises as to whether or not a witness's evidence requires corroboration on the ground that he is an accomplice, the test is not the technical one of whether the witness could have been convicted for his participation in the offence if he had been charged. The true question is, having regard to his participation in the offence and having regard to all the circumstances of the case, is his evidence to be regarded with suspicion and as possibly so tainted as to invite if not to demand corroboration before it is accepted.

The evidence of a child must be regarded with suspicion because it is a matter of common knowledge that children at times find it difficult to distinguish between reality and fantasy. They find it difficult after a lapse of time to distinguish between the results of observation and the results of imagination. Juries should be invited to consider their own experience in connection with stories told by children. It is not sufficient merely to observe that there is a risk in acting on the uncorroborated evidence of a child. It is a sound rule of practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law.

Cases referred to:—

(1) *R.* v. *Baskerville* [1916] 2 K.B. 658.

(2) *Mat bin Awang Kechik & Ors.* v. *Public Prosecutor* [1959] M.L.J. 216.

(3) *Umadasi Dasi* v. *Emp.* A.I.R. 1924 Cal. 1031, 1033.

(4) *R.* v. *Ncanana* [1948] 4 S.A.L.R. 399, 405.

(5) *Mohamed Sugal Esa* v. *The King* A.I.R. 1946 P.C. 3, 6.

COURT OF APPEAL.

D. S. Marshall (*E. W. Barker* with him) for the appellants.

Pawan Ahmad bin Ibrahim Rashid (Deputy Public Prosecutor) for the respondent.

Thomson C.J.: These appellants were convicted at Muar for the murder of a man Subramaniam and a woman Chan Chong Moy on Temiang Renchong Estate, Pagoh, on or about 21st September, 1958. They appea'ed against their convictions and on 23rd September, 1959, we allowed their appeals and set their convictions aside.

The dead bodies of Subramaniam and Chan Chong Moy were found at some distance from each other on the estate in question in circumstances which clearly showed they had been killed. The man had a single stab wound in the stomach and the woman had two stab wounds in the chest. Apart from a slight superficial abrasion on the man's neck there were no other external injuries on the bodies.

Except on one point, to which I shall return later, the only evidence as to how the deceased came by their fatal injuries was that of one Ramaya, an Indian boy who said (and this was never questioned) that he was twelve years old. Briefly his evidence, which was given on affirmation, was as follows.

On the afternoon of 20th September he was on his way to the garden of the first appellant to buy vegetables when he came on the third appellant sitting on the ground. Near him the two deceased were tied to trees. They were still alive but they could not talk as they were gagged. He went on his way and later the third appellant came to him at the first appellant's house and told him that if he said anything about what he had seen his life would be in danger.

The following evening the first appellant came to him and told him that there was some work to be done and that he should wait on the Estate football field. He went to the football field where he found the sixth appellant and one Vitalingam. Shortly afterwards a car, number M. 5324, came to the football field driven by the fifth appellant The first, second, third and fourth appellants were in it. The witness got into the car with the sixth appellant and Vitalingam and the whole party went to the first appellant's house where they had a meal, in the course of which the fourth and fifth appellants went away for a time, apparently in the motor-car. When they returned the fourth appellant told the witness that they were going to kill Subramaniam and Chan Chong Moy and asked him to be a sentry. He refused; whereupon the fourth appellant put a knife to his throat and said that if he did not act as a sentry he would be killed. On this he agreed.

The whole party then went to the spot where the witness had seen Subramaniam and Chan Chong Moy tied to trees and found they were still there but had now been tied to neighbouring clumps of bamboos. They were untied and the six appellants took them into some thick bushes. It was then dark but the third appellant had a lamp. Some time later the six appellants returned carrying Chan Chong Moy who was now dead and Subramaniam who was still alive

but had been stabbed in the stomach. The bodies were taken away in different directions and the witness did not see to where they were taken.

If this story was true it clearly follows that whoever did the actual stabbing the six appellants combined and acted together to kill the two deceased.

But was it true ?

Unfortunately, there was no evidence whatsoever to corroborate Ramaya's story so as to implicate any of the appellants except the fifth appellant who very much later on the night of 21st September was found apparently asleep in the car number M. 5324, which was his property and which he used as a taxi, near the spot where the body of the male deceased was found. The appellants all denied any knowledge of the affair and attempted to set up alibis although none of them gave evidence on oath and the man Vitalingam, who was called as a witness for the prosecution, also denied any knowledge of the affair.

Ramaya was arrested by the Police on 26th September and charged with the murder together with the appellants. Some time later he made statements to the Police and he was released and the murder charge against him was dropped. There was a somewhat curious conflict of testimony as to the time he was kept in custody. He said he was detained for three or four months whereas a senior Police Officer, speaking after reference to his diary, said the period was nine days. Unfortunately at the trial the question was left there although, presumably, it could have been settled by reference to the Police records.

The whole case stood or fell according as to whether or not the jury believed the evidence of Ramaya. This witness was a child, he might be regarded as an accomplice in the crime and he had certainly been arrested for participation in it and detained in custody for at least nine days during which time he had made statements to the Police which were followed by his release.

There was, of course, no reason why the jury should not believe Ramaya's evidence and if they did believe it it was their duty to convict all the appellants. In the circumstances, however, it was imperative that they should receive the most careful guidance and direction from the trial Judge.

In the course of an otherwise adequate and careful summing-up His Lordship dealt with the matter in the following passage which it is necessary to quote *in extenso*:—

" Now we come to the question of accomplices. It is my duty to warn you that although you may convict on the evidence of an accomplice it is dangerous to do so unless it is corroborated. The reason for that is obvious. It is quite possible that an accomplice may try to get away with a crime by putting the blame on someone else. The corroboration that is required is stated in the case of *R.* v. *Baskerville*[1] which has already been referred to by counsel for the defence, and this is what it says:—

'The evidence in corroboration must be independent testimony which affects the accused by connecting, or tending to connect, him with the crime. In other words, it must be evidence which implicated him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it. Corroborative evidence is evidence which shows, or tends to show, that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed but that it was committed by the accused.'

I am not going to burden you with the definition of an accomplice. I will merely tell you this. If you are satisfied that PW 9, Ramaya, was acting throughout under duress by virtue of the 4th accused's threat to him, then he was not an accomplice. But if you think he was not acting under duress then he was an accomplice. Whether or not he was an accomplice is a question of fact for you.

Even if you think that he was not an accomplice, you must still be careful (doubly careful if you think he was one), because he is a child of 12 years of age. Rather an old looking child I think you will agree, but the evidence is that his age is only 12 years. As you saw he was sworn in the witness box. The sworn evidence of a child need not as a matter of law be corroborated. but again it is my duty to warn you that there is a risk in acting on the uncorroborated evidence of a child, though you may do so if you are convinced that he is telling the truth."

In our view this direction was unsuitable and inadequate on two main grounds. Before stating these, however, the observation should be made that the object of a summing-up is to enable the jury to arrive at a correct verdict on the view they take of the facts. It is, therefore, not sufficient that the Judge's observations on questions of law should be correct. Of course they should be correct. But it is also imperative that they should be expressed in such a way as to be capable of being understood by the jury and as to assist the jury in its task. We expressed this view a few months ago in the case of *Mat bin Awang Kechik & Ors.* v. *Public Prosecutor*.[2]

The trial Judge's initial observations on the subject of accomplice evidence which have been quoted were no doubt correct. It was, however, in our view likely to mislead the jury to say that the question of whether the evidence of Ramaya should be treated as that of an accomplice so as to demand corroboration should depend on whether or not when he acted as he said he acted he did so as he said under duress.

It is true that by reason of section 94 of the Penal Code duress is not a defence to a charge of murder, although in at least one case an Indian Court has held that it is a defence to a charge of abetment of murder (see *Umadasi Dasi* v. *Emp.*[3]). The true question, however, was not the technical one of whether the witness could have been convicted for his participation in the offence if he had been prosecuted. The true question was whether, having regard to his participation in the offence and having regard to all the circumstances of the case, his evidence was to be regarded with suspicion and as possibly so tainted as to invite if not to demand corroboration before it was accepted.

After all, the witness had admittedly assisted in the commission of the crime by acting as a

sentry and for that had been arrested and charged with murder and detained in custody. While in custody he had made statements to the Police and had been released and was then called as a prosecution witness. He excused himself for his participation in the crime by saying, which might or might not be true, that he acted under duress, under threats of death. He had every reason in the world for avoiding personal criminal liability. The result clearly was that even if technically he was not an accomplice and therefore as a matter of law his evidence did not require corroboration nevertheless as a matter of prudence it should have been examined most carefully in the light of the rest of the evidence to ascertain whether as regards any of the accused it was corroborated before it was relied on against that accused. In effect, however, the jury were told that if they were satisfied that he was not acting under duress then his evidence need not call for corroboration by reason of his participation in the crime. In our view this, if not actually misleading, was an extremely inadequate direction. It was peculiarly a case where to quote the words of Schreiner J.A. in the South African case of *R.* v. *Ncanana*[4]:—

"the trier of fact should warn himself, or, if the trier is a jury, that it should be warned, of the special danger of convicting on the evidence of an accomplice; for an accomplice is not merely a witness with a possible motive to tell lies about an innocent accused but is such a witness peculiarly equipped, by reason of his inside knowledge of the crime, to convince the unwary that his lies are the truth."

It is true, and this leads to the second ground on which we regard the summing-up as unsatisfactory, that the Judge went on to warn the jury that even if the witness was not an accomplice he was a child and that there is a risk in acting on the uncorroborated evidence of a child.

Again, in our view, the direction though not inaccurate was inadequate. One reason why children's evidence is regarded with suspicion is that there is always the danger that a child may not fully understand the effect of taking an oath. In this country where evidence is taken on affirmation that consideration loses much of its force. Another reason, however, which in this country possesses undiminished force is that it is a matter of common knowledge that children at times find it difficult to distinguish between reality and fantasy. They find it difficult after a lapse of time to distinguish between the results of observation and the results of imagination. In our view something of the sort should have been put to the jury. At the very lowest they should have been invited to consider their own experience in connection with stories told by children. It was not sufficient merely to observe that there is a risk in acting on the uncorroborated evidence of a child. In any event we have grave doubts as to whether even so far as it goes that observation is strong enough. As was said by Lord Goddard in the case of *Mohamed Sugal Esa* v. *The King*[5]:—

"It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law."

Had the jury been directed as fully as we think they should have been on these points it is quite impossible to say with certainty that the appellants would have been convicted. In the circumstances we had no option but to quash their convictions.

Appeals allowed. Convictions quashed.

Solicitors: *Lee & Lee.*

HARDIAL SINGH v. LIM LYE HUAT

[A. C. J. (Rose C.J.) March 18, 1960]

[Singapore — District Court Appeal No. 25 of 1959]

Landlord and Tenant — Infringement of the provisions of s.15(g) — Control of Rent Ordinance (Cap. 242) — Method of calculation.

By law the tenant is entitled to collect in the aggregate from his subtenants a sum not exceeding 110 per cent of the recoverable rent paid by himself, excluding any amounts which can be attributed to municipal services paid by himself for the use of his subtenants.

Method of calculating recoverable rent discussed.

DISTRICT COURT APPEAL.

J. E. Lloyd for the appellant.

Tan Boon Teik (Director of Legal Aid) for the respondent.

Rose C.J.: The claim in the present matter is for possession of premises occupied by the defendant/respondent on the ground that he has infringed the provisions of section 15(g) of the Control of Rent Ordinance (Cap. 242). The subsection reads as follows:—

"(g) where the tenant having sublet the premises or part thereof receives in respect of such subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him;".

It is common ground that the respondent was paying to the appellant a rental of $37.50 per month and that he had sublet a portion of the premises. The rental value of the portion of the premises retained by the respondent is agreed at $10.12.

By law he is entitled to collect in the aggregate from his subtenants a sum not exceeding 110 per cent. of the recoverable rent paid by himself, excluding any amounts which can be attributed to municipal services paid by himself for the use of his subtenants.

Calculating the sum to be arrived at the learned District Judge added $3.75 (i.e. 10% x $37.50) to the rental, thus arriving at a figure of $41.25 from which must be deducted $10.12, leaving a figure of $31.13 which he is entitled to collect from his subtenants exclusive of municipal services.